IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 14604 of 2007(R)

PETITIONER:

ROY VARGHESE, S/O.O.E.VARGHESE,
AGED 32, ADVOCATE, PIPELINE,
THAMMANAM - PULLEPPADY ROAD, KATHRIKADAVU,
KALOOR P.O., KOCHI-17.

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENTS:

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1. HIGH COURT OF KERALA, KOCHI- 682031,
REPRESENTED BY ITS REGISTRAR
(SUBORDINATE JUDICIARY)

2. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.B.UNNIKRISHNA KAIMAL
GOVERNMENT PLEADER(FINANCE) SRI.N.MANOJKUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) No. 14604 of 2007-R

Dated this the 12th day of June, 2007.

J U D G M E N T

The petitioner is a practising lawyer who is an applicant for appointment to the post of Munsiff-Magistrate, pursuant to Ext.P1 notification issued by the High Court of Kerala. The petitioner is a physically challenge person with 50% locomotive disability. According to him, the High Court should have reserved 3% of the vacancies notified to be filled up for the physically handicapped persons. Feeling aggrieved by the omission of the respondents to reserve 3% seats for the physically handicapped persons, this writ petition was filed, seeking the following reliefs.

> i). Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to earmark 3% vacancies to the post of Munsiff-magistrate in the Kerala Judicial Service for the persons having disabilities.
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> ii). Issue a further direction directing the respondents to earmark 3% vacancies mentioned in Ext.P1 notification and to fill the backlogs by earmarking the same to the persons with disabilities and to consider the petitioner's application for the post of

Munsiff-Magistrate in the category to be reserved for persons with disabilities.

iii). Quash Ext.P1 notification to the extent it does not provide 3% reservation to the persons with disability, to the post of Munsiff-Magistrate in the Kerala Judicial Service.

iv). Issue a writ in the nature of declaration, declaring that the Kerala Judicial Service Rules 1991 is arbitrary, unreasonable, violative of Art.14 to an extent it does not provide for reservation to physically challenged persons in accordance with Sec.33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and ultra vires of the Constitution.

2. In the writ petition, the first respondent has filed a counter affidavit contending that as per Sec.32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Government have issued order dated 14-7-1998 providing 3% reservation to physically handicapped persons in Class III & Class IV posts. Later, the Government on the recommendation of an expert committee has identified 20 posts coming under Class I and Class II posts and order was issued identifying the posts in Class I and Class II found suitable for applying the 3% reservation for the

physically handicapped persons. The list of such posts identified are included in the Appendix to Ext.R1(a) Government Order dated 6-8-2005. Since the Government did not identify the post of Munsiff-Magistrate as one of the posts for which 3% reservation could be provided as per Ext.R1(a), the first respondent submitted that Ext.P1 did not contain any reservation for the physically handicapped persons.

3. The second respondent has filed a statement substantially raising the very same contentions taken by the first respondent. After the filing of the counter affidavit by the first respondent, the petitioner has amended the writ petition, challenging Ext.R1(a), producing the same as Ext.P3 in the amended writ petition and he has amended the prayers also incorporating the following additional prayers.

> v). Quash Ext.P3 to an extent it does not provide 3% reservation to disabled persons in the post of Munsiff-Magistrate.
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> vi). Issue a writ in the nature of declaration declaring that Ext.P3 is illegal, arbitrary and violative of Art.14 and 16 of the Constitution as it does not provide 3% reservation to disabled persons in the post of Munsiff-Magistrate.

4. The petitioner has also filed a reply affidavit dealing with the

contentions in the counter affidavit of the first respondent and the statement of the second respondent.

5. Heard the learned counsel on both sides. The learned counsel for the petitioner took me to the objects and reasons of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the Act) and also its Preamble. He prayed for a purposive interpretation of the Statute and to adopt the interpretation in such a way which will advance the object of the Act. In the light of the Act, the learned counsel for the petitioner submitted that the Government was bound to provide for reservation to the post of Munsiff-Magistrate also, in Ext.P3. Going by the various posts included therein, the functions of many are those..... There is no justification for excluding the post of Munsiff-Magistrate from the purview of Ext.P3. So, the learned counsel prays that this Court may issue appropriate directions to the respondents to make provision for reservation of 3% of the posts of Munsiff-Magistrate to the physically challenged persons. The learned counsel also brought to my notice that notification itself has provided for low rate fee for physically handicapped persons. It means that this Court is aware of the possibility of the physically challenged persons

also submitting applications for the post. Therefore, it was the duty of this Court to ensure that 3% reservation is made for physically challenged persons in the matter of recruitment to the post of Munsiff-Magistrate. Therefore, he prayed for granting the reliefs sought.

6. The learned Senior counsel for the first respondent submitted that it has no power or authority to provide for reservation and modify Ext.P1 order. As per the provisions of the Act, it is for the Government to identify and decide the posts for which reservation can be granted. It is evident from the notification that the physically handicapped persons are also eligible to be considered for appointment, provided they have sound health and are free from bodily defect which renders them unfit for appointment. As long as there is no reservation made by the Government under Section 32 of the Act, the High Court is not competent to grant it, it is submitted. The learned Government Pleader, on the other hand submitted that the Government constituted an expert committee and on the recommendations of it, 20 posts were identified and provision was made for reservation for appointment to that posts. The Government will consider making reservations to various other Class I and Class II posts including Munsiff-Magistrate, it is submitted.

7. Ext.P1 is a notification issued in the light of the Special Rules prescribing qualification and method of appointment to the post of Munsiff-Magistrate. The role of the High Court is in the nature of a recruiting agency like PSC which makes the selection and advice the Government as to who are persons to be appointed. As per the rules the Government is the appointing authority. The High Court is not competent to take any decision regarding reservation under the provisions of the Act or otherwise. Of course, the Government have the power and authority and also the duty to identify the posts to which reservation for appointment is made in favour of physically handicapped persons. Persons suffering from 40% disability is considered as a physically challenged person. Among them there may be certain persons whose disability may not stand in the way of functioning as Munsiff-Magistrate. That is the reason why the High Court while issuing notification provided that physically handicapped persons will get application forms at concessional rate. As long as the post of Munsiff-Magistrate is not identified and included in Ext.P3 Government Order, the petitioner cannot claim any reservation.

8. The petitioner as stated earlier has amended the writ petition challenging Ext.P3 to the extent it does not include the post of

Munsiff-Magistrate. Ext.P3 is not a final order providing reservation for all possible posts. It has at the first instance provided reservation for 20 posts. A reading of the order itself would show that there will be further identification of posts and notification providing reservation in Class I and Class II posts. Ext.P3 cannot be quashed for the reason that it has not identified and included all the possible posts in which the physically handicapped persons can work in the Class I and Class II category. As evident from Ext.P3, it is a first step in that direction. So, the said order cannot be condemned for the reason that it does not include a particular post to which reservation can be made.

in view of the above facts, no relief could be granted to the petitioner in the writ petition. The petitioner is free to move the Government for appropriate relief under Section 32 of the Act for providing reservation to the post of Munsiff-Magistrate also. Subject to that right, the Writ Petition is dismissed.

K.BALAKRISHNAN NAIR,
JUDGE.

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